



General Assembly

February Session, 2004

Raised Bill No. 497

LCO No. 1683

01683_____JUD

Referred to Committee on Judiciary

Introduced by:
(JUD)

AN ACT CONCERNING CRIMINAL PENALTIES FOR FAILURE TO PROVIDE SUPPORT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 53-304 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2004*):

3 [(a) Any person who neglects or refuses to furnish reasonably
4 necessary support to the person's spouse, child under the age of
5 eighteen or parent under the age of sixty-five shall be deemed guilty of
6 nonsupport and shall be imprisoned not more than one year, unless
7 the person shows to the court before which the trial is had that, owing
8 to physical incapacity or other good cause, the person is unable to
9 furnish such support. Such court may suspend the execution of any
10 community correctional center sentence imposed, upon any terms or
11 conditions that it deems just, may suspend the execution of the balance
12 of any such sentence in a like manner, and, in addition to any other
13 sentence or in lieu thereof, may order that the person convicted shall
14 pay to the Commissioner of Administrative Services directly or
15 through Support Enforcement Services of the Superior Court, such
16 support, in such amount as the court may find commensurate with the

17 necessities of the case and the ability of such person, for such period as
18 the court shall determine. Any such order of support may, at any time
19 thereafter, be set aside or altered by such court for cause shown.
20 Failure of any defendant to make any payment may be punished as
21 contempt of court and, in addition thereto or in lieu thereof, the court
22 may order the issuance of a wage withholding in the same manner as
23 is provided in section 17b-748, which withholding order shall have the
24 same precedence as is provided in section 52-362. The amounts
25 withheld under such withholding order shall be remitted to the
26 Department of Administrative Services by the person or corporation to
27 whom the withholding order is presented at such intervals as such
28 withholding order directs. For purposes of this section, the term "child"
29 shall include one born out of wedlock whose father has acknowledged
30 in writing his paternity of such child or has been adjudged the father
31 by a court of competent jurisdiction.

32 (b) Any person who violates any provision of this section may be
33 prosecuted before any court of this state in the same manner as if such
34 offense had been committed within the territorial jurisdiction of such
35 court.

36 (c) A written agreement to support or any modification of an
37 agreement to support filed with said court or the assistant clerk of the
38 Family Support Magistrate Division shall have the same force and
39 effect as an order of support by the Superior Court and shall be
40 enforceable in the same manner as is provided herein for orders of
41 support issued by the court.

42 (d) Family relations counselors and support enforcement officers
43 employed by the Judicial Department may administer oaths in all
44 affidavits, statements, complaints and reports made to or by such
45 family relations counselors and support enforcement officers in the
46 performance of their duties.]

47 (a) As used in this section and section 53-308, as amended by this
48 act, "support order" means a judgment, decree or order, whether

49 temporary, final or subject to modification, issued by a court of
50 competent jurisdiction or an administrative agency, for the benefit of a
51 child, spouse, former spouse or parent, that provides for monetary
52 support, medical support, health care, arrearages or reimbursement,
53 whether incidental to a proceeding for divorce, separate maintenance,
54 paternity, guardianship, civil protection or otherwise.

55 (b) (1) A person is guilty of criminal nonsupport when such person
56 knowingly fails, refuses or neglects to provide minimum basic
57 requirements for food, clothing or shelter for a minor child of such
58 person.

59 (2) Criminal nonsupport is a class B misdemeanor, except, if such
60 person has previously been convicted under this subsection or
61 subsection (c) of this section, criminal nonsupport is a class A
62 misdemeanor.

63 (c) (1) A person is guilty of aggravated criminal nonsupport when
64 such person, being subject to a support order, is delinquent in meeting,
65 when due, the full obligation established by such support order and
66 has been so delinquent for a period of not less than four months.

67 (2) Aggravated criminal nonsupport is a class A misdemeanor,
68 except that aggravated criminal nonsupport is a class D felony when
69 any one of the following aggravating factors is present: (A) Such
70 person has previously been convicted under this subsection; (B) such
71 period of delinquency is eight consecutive months or more; or (C) such
72 delinquency includes an arrearage of ten thousand dollars or more.

73 (d) In any prosecution under subsection (b) of this section, it shall be
74 an affirmative defense that the defendant has fully complied with a
75 support order to which the defendant is subject that was in effect for
76 the support of the minor child during the time period relevant to the
77 offense charged.

78 (e) In any prosecution under subsection (b) or (c) of this section, it

79 shall be an affirmative defense that the defendant (1) was unable to
80 pay or provide support as a result of extenuating circumstances over
81 which the defendant had no control, or (2) was unemployed or
82 underemployed with justifiable excuse. For the purposes of
83 subdivision (2) of this subsection, justifiable excuse may be established
84 where the defendant has been involuntarily terminated from his or her
85 employment or otherwise has his or her income involuntarily reduced
86 and is diligently and in good faith seeking reasonably appropriate
87 employment opportunities under all the circumstances or pursuing
88 self-employment.

89 (f) In any prosecution under subsection (b) or (c) of this section,
90 payment records maintained by a court or administrative agency
91 through which a support order is payable are prima facie evidence of
92 support paid or unpaid and accrued arrearages.

93 (g) A privilege against disclosure of communications between
94 spouses does not apply in a prosecution under subsection (b) or (c) of
95 this section. In any such prosecution, the spouse or former spouse of
96 the defendant shall be a competent witness and may elect or be
97 compelled to testify in the same manner as any other witness.

98 (h) (1) The court, in its discretion, may order that any fine imposed
99 for a conviction under subsection (b) of this section be paid for the
100 support of a minor child of the defendant.

101 (2) The court, in its discretion, may order that any fine imposed for a
102 conviction under subsection (b) or (c) of this section be applied in
103 accordance with any support order to which the defendant is subject.

104 (i) The court shall order any defendant convicted under subsection
105 (b) or (c) of this section to make restitution to a person entitled to
106 support by the defendant. The amount of such restitution shall be (1)
107 any arrearages under a support order to which the defendant is subject
108 that accrued during the time period relevant to the offense for which
109 the defendant is convicted, or (2) if there is no such support order, a

110 reasonable amount as determined by the court.

111 Sec. 2. Section 53-305 of the general statutes is repealed and the
112 following is substituted in lieu thereof (*Effective October 1, 2004*):

113 If [the accused] any defendant convicted under subsection (b) or (c)
114 of section 53-304, as amended by this act, appeals, [such] the court, in
115 addition to requiring a recognizance or appearance bond, may order
116 such [accused] defendant to give a bond conditioned for his furnishing
117 support pending the determination of such appeal.

118 Sec. 3. Section 53-306 of the general statutes is repealed and the
119 following is substituted in lieu thereof (*Effective October 1, 2004*):

120 If any [person] defendant convicted under subsection (b) or (c) of
121 section 53-304, as amended by this act, fails to comply fully with [the
122 terms and conditions imposed under the provisions] any order made
123 under subsection (h) or (i) of said section or to make any payment
124 required by any bond given pursuant to an appeal under section 53-
125 305, as amended by this act, [the] any suspension of [the execution of
126 any community correctional center] a sentence imposed may be
127 revoked and such [person] defendant may be committed, and any such
128 action shall not affect the validity of any such bond.

129 Sec. 4. Section 53-308 of the general statutes is repealed and the
130 following is substituted in lieu thereof (*Effective October 1, 2004*):

131 When any bond or recognizance conditioned for the appearance of
132 any [person accused in any information or complaint charging a
133 violation of any of the provisions] defendant in a prosecution under
134 subsection (b) or (c) of section 53-304, as amended by this act, becomes
135 forfeited or whenever any [person] defendant convicted under [the
136 provisions] subsection (b) or (c) of said section gives a bond and fails to
137 comply with the provisions of [the same] such bond, the court before
138 which such [information or complaint] prosecution is pending or in
139 which such conviction was had, upon collection or settlement of such

140 forfeited bond or recognizance, may order the avails or any portion
141 thereof to be [paid to the spouse or for the support of the children or
142 both, in such manner and installments as such court may find
143 reasonable, or may order the avails or any portion thereof to be paid to
144 the selectmen of the town, Support Enforcement Services of the
145 Superior Court, or the Commissioner of Administrative Services, who
146 shall administer the same for the benefit of the spouse or children or
147 both, as they or he may find reasonable] applied in accordance with
148 any support order to which the defendant is subject or, if there is no
149 such support order, paid for the support of a person entitled to
150 support by the defendant, as determined by the court.

151 Sec. 5. (NEW) (*Effective October 1, 2004*) (a) A person is guilty of
152 hindering the payment of support in the first degree when such person
153 transfers an asset to another, or receives or conceals an asset of
154 another, knowing that such asset is being transferred, received or
155 concealed for the purpose of avoiding any payment due under a
156 support order, as defined in section 53-304 of the general statutes, as
157 amended by this act.

158 (b) Hindering the payment of support in the first degree is a class D
159 felony.

160 Sec. 6. (NEW) (*Effective October 1, 2004*) (a) A person is guilty of
161 hindering the payment of support in the second degree when such
162 person, having information concerning the current whereabouts,
163 current address or current employment of an individual who has
164 failed to make any payment due under a support order, as defined in
165 section 53-304 of the general statutes, as amended by this act, and
166 without having a legal right to do so, intentionally conceals or
167 intentionally refuses or fails to provide such information to a peace
168 officer or a support enforcement officer of Support Enforcement
169 Services of the Superior Court when requested by such officer in the
170 performance of such officer's duties for the purpose of enforcing such
171 support order.

172 (b) Hindering the payment of support in the second degree is a class
173 A misdemeanor.

174 Sec. 7. Section 1-1e of the general statutes is repealed and the
175 following is substituted in lieu thereof (*Effective October 1, 2004*):

176 Nothing in sections 1-1d, 3-94b to 3-94e, inclusive, 7-6, 7-51, 7-53, as
177 amended, 7-54, as amended, 7-172, as amended, 9-12, as amended, 10a-
178 207, 14-14, 14-36, as amended, 14-40a, as amended, 14-41, as amended,
179 14-44, as amended, 14-61, 14-73, 14-214, 14-276, 17a-1, 17a-152, 17b-75,
180 17b-81, 17b-223, 17b-748, 18-73, 18-87, as amended, 19a-512, 20-10, 20-
181 130, 20-146, 20-188, 20-213, 20-217, 20-236, 20-250, 20-252, 20-270, 20-
182 291, as amended, 20-316, as amended, 20-361, 20-590, as amended, 20-
183 592, 26-38, 29-156a, 30-1, as amended, 30-45, as amended, 30-86a, as
184 amended, 31-222, 38a-482, 38a-609, 38a-633, 38a-786, 45a-263, 45a-502,
185 45a-504, 45a-606, 45a-754, 46b-129, as amended, 46b-215, as amended,
186 52-572, [53-304,] 53-330, 53a-70 or 53a-87 shall impair or affect any act
187 done, offense committed or right accruing, accrued or acquired, or an
188 obligation, liability, penalty, forfeiture or punishment incurred prior to
189 October 1, 1972, and the same may be enjoyed, asserted and enforced,
190 as fully and to the same extent and in the same manner as they might
191 under the laws existing prior to said date, and all matters civil or
192 criminal pending on said date or instituted thereafter for any act done,
193 offense committed, right accruing, accrued, or acquired, or obligation,
194 liability, penalty, forfeiture, or punishment incurred prior to said date
195 may be continued or instituted under and in accordance with the
196 provisions of the law in force at the time of the commission of said act
197 done, offense committed, right accruing, accrued, or acquired, or
198 obligation, liability, penalty, forfeiture or punishment incurred.

199 Sec. 8. Subsection (b) of section 17b-229 of the general statutes is
200 repealed and the following is substituted in lieu thereof (*Effective*
201 *October 1, 2004*):

202 (b) The provisions of sections 17a-278, 17a-502, 17b-222, 17b-223,
203 17b-228, 17b-232, 17b-748 [.] and 46b-215, [and 53-304] as amended,

204 shall not affect or impair the responsibility of any patient or patient's
205 estate for his care in a state humane institution prior to July 1, 1955,
206 and the same may be enforced by any action by which such
207 responsibility would have been enforceable prior to July 1, 1955, but
208 only to the extent of that portion of such estate as is not needed for the
209 support of the spouse, parents and dependent children of such patient.

210 Sec. 9. Subdivision (3) of subsection (m) of section 46b-231 of the
211 general statutes is repealed and the following is substituted in lieu
212 thereof (*Effective October 1, 2004*):

213 (3) Family support magistrates shall review and approve or modify
214 all agreements for support in IV-D support cases filed with the Family
215 Support Magistrate Division in accordance with sections 17b-179, as
216 amended, 17b-745, as amended, 46b-172 [.] and 46b-215, [and
217 subsection (c) of section 53-304] as amended.

218 Sec. 10. Subsection (r) of section 46b-231 of the general statutes is
219 repealed and the following is substituted in lieu thereof (*Effective*
220 *October 1, 2004*):

221 (r) Orders for support entered by a family support magistrate shall
222 have the same force and effect as orders of the Superior Court, except
223 where otherwise provided in sections 17b-81, 17b-93, 17b-179, as
224 amended, 17b-743, 17b-744, as amended, 17b-745, as amended, and
225 17b-746, subsection (a) of section 46b-55, sections 46b-59a, 46b-86 and
226 46b-172, this chapter, subsection (b) of section 51-348, section 52-362, as
227 amended, subsection (a) of section 52-362d, as amended, and
228 subsection (a) of section 52-362e, [and subsection (c) of section 53-304,]
229 and shall be considered orders of the Superior Court for the purpose of
230 establishing and enforcing support orders of the family support
231 magistrate, as provided in sections 17b-81, 17b-93, 17b-179, as
232 amended, 17b-745, as amended, 52-362, as amended, 52-362d, as
233 amended, and 52-362e, [and 53-304] as amended, except as otherwise
234 provided in this section. All orders for support issued by family
235 support magistrates in any matter before a magistrate shall contain an

236 order for withholding to enforce such orders as set forth in section 52-
237 362, as amended.

238 Sec. 11. Section 46b-235 of the general statutes is repealed and the
239 following is substituted in lieu thereof (*Effective October 1, 2004*):

240 The provisions of subsection (a) of section 4a-2, subsection (a) of
241 section 4a-12, sections 17b-137, 17b-179, as amended, 17b-745, as
242 amended, 46b-172, 46b-207, 46b-208, 46b-215, as amended, 46b-218,
243 46b-231, as amended, and 46b-235, subsection (a) of section 51-348a,
244 subsection (d) of section 52-50, and sections 52-259a, as amended, 52-
245 362, as amended, and 52-362c to 52-362f, inclusive, [and 53-304] shall
246 not be construed to alter, modify, impair or change existing collective
247 bargaining agreements, any bargaining unit designation, award,
248 settlement, benefit, existing employment practice or classification of
249 any employee in the event of transfer from one division, bureau or
250 agency or department to another division, agency or department.

251 Sec. 12. Subsection (a) of section 51-348a of the general statutes is
252 repealed and the following is substituted in lieu thereof (*Effective*
253 *October 1, 2004*):

254 (a) Notwithstanding the issuance of an order for support of a minor
255 child or children by the Superior Court under the provisions of section
256 46b-84, as amended, any prosecution [for nonsupport of a minor child
257 or children as specified in] under subsection (b) or (c) of section 53-304,
258 as amended by this act, may be brought to the geographical area of the
259 superior court and shall proceed on proper complaint from the payee
260 of the order, a support enforcement officer or an authorized
261 representative of the Commissioner of Administrative Services.

262 Sec. 13. Section 54-84a of the general statutes is repealed and the
263 following is substituted in lieu thereof (*Effective October 1, 2004*):

264 If any person on trial for crime has a husband or wife, he or she
265 shall be a competent witness but may elect or refuse to testify for or

266 against the accused, except that either spouse who has received
267 personal violence from the other or is the spouse of one who is charged
268 with violation of any of sections 53-20, 53-21, 53-23, [53-304,] 53a-70,
269 53a-70a, 53a-71 and 53a-83 to 53a-88, inclusive, may, upon his or her
270 trial for offenses arising out of such personal violence or from violation
271 of the provisions of any of said sections, be compelled to testify in the
272 same manner as any other witness.

This act shall take effect as follows:	
Section 1	<i>October 1, 2004</i>
Sec. 2	<i>October 1, 2004</i>
Sec. 3	<i>October 1, 2004</i>
Sec. 4	<i>October 1, 2004</i>
Sec. 5	<i>October 1, 2004</i>
Sec. 6	<i>October 1, 2004</i>
Sec. 7	<i>October 1, 2004</i>
Sec. 8	<i>October 1, 2004</i>
Sec. 9	<i>October 1, 2004</i>
Sec. 10	<i>October 1, 2004</i>
Sec. 11	<i>October 1, 2004</i>
Sec. 12	<i>October 1, 2004</i>
Sec. 13	<i>October 1, 2004</i>

Statement of Purpose:

To provide enhanced criminal penalties for failure to provide support to minor children and others lawfully entitled to such support.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]